

Message Text

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ACTION NEA-11

INFO OCT-01 EUR-12 ISO-00 NEAE-00 L-03 SSO-00 INRE-00
NSCE-00 ICAE-00 DOEE-00 SOE-02 AID-05 CEA-01
CIAE-00 COME-00 DODE-00 EB-08 DOE-15 H-01 INR-10
INT-05 NSAE-00 OMB-01 PM-05 OES-07 SP-02 SS-15
STR-07 TRSE-00 ACDA-12 /123 W
-----087698 231326Z /47

O R 231225Z MAY 78 ZFF-4
FM AMEMBASSY ABU DHABI
TO SECSTATE WASHDC NIACT IMMEDIATE 7871
AMEMBASSY TEHRAN NIACT IMMEDIATE
INFO AMEMBASSY JIDDA
AMEMBASSY KUWAIT
AMEMBASSY LONDON
AMEMBASSY MANAMA
AMEMBASSY MUSCAT

C O N F I D E N T I A L AB DHABI 1470

E.O. 11652: GDS
TAGS: ENRG, EINV, TC, IR, US
SUBJECT: TAX AND ROYALTY PROBLEM FOR CRESCENT PETROLEUM

REFS: (A) STATE 130196, (B) STATE 129910, (C) TEHRAN 4805,
(D) STATE 122746

1. WE ARE PUZZLED BY ELY REPORT TO DEPARTMENT (REF A) THAT HE HAS
REPORT FROM JAFFAR THAT RULER OF SHARJAH PLANS TO TAKE SOME SORT OF
UNSPECIFIED BUT PRECIPITATE ACTION IN NEAR FUTURE RE HIS DISPUTE WITH
CRESCENT. JAFFAR CALLED ON AMBASSADOR AND DCM AT NOON ON MAY 22
TO PROVIDE US WITH COPY OF CRESCENT LETTER OF MAY 15 RESPONDING TO
THAT FROM RULER PLEADING SOVEREIGN IMMUNITY FROM ARBITRATION.
JAFFAR EXPLAINED THAT HE FEARED RULER MIGHT REPEAT MIGHT
REACT NEGATIVELY TO COMPANY'S CONTINUING INSISTENCE
UPON ARBITRATION BUT AGREED WITH US THAT "PRECIPITATE ACTION"
NOT TOO LIKELY. JAFFAR SAID HE EXPECTED TO DELIVER LETTER TO
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RULER AFTERNOON OF MAY 22 OR AS SOON THEREAFTER AS APPOINTMENT
COULD BE ARRANGED. UPON RECEIVING REF A, AMBASSADOR
TELEPHONED JAFFAR WHO CONFIRMED THERE HAD BEEN NO REPEAT NO
NEW DEVELOPMENTS SINCE YESTERDAY NOON.

2. ALTHOUGH WITHOUT INSTRUCTIONS CONTAINED REF (A), AMBASSADOR
DISCUSSED TAX AND ROYALTY PROBLEM INFORMALLY WITH UAE OIL

MINISTER UTAYBA MAY 20 WHO MADE NOTES BUT INDICATED THAT FEDERAL MINISTRY HAD NO JURISDICTION OF THIS MATTER UNLESS INVITED BY SHARJAH GOVT. (MEMCON BEING POUCHED). AMBASSADOR ALSO HAD REQUESTED APPOINTMENT TO CALL ON RULER OF SHARJAH MAY 30 IN CONNECTION WITH OTHER PROPOSED CALLS IN NORTHERN EMIRATES AND JAFFAR HAD INDICATED THAT THIS TIMING WAS SATISFACTORY TO CRESCENT. HOWEVER, IN VIEW OF LATEST INSTRUCTIONS AND APPARENT UNCERTAINTY HOW RULER OF SHARJAH WILL REACT TO MAY 15 LETTER FROM CRESCENT, AMBASSADOR HAS REQUESTED AND RECEIVED APPOINTMENT TO SEE RULER AT 11 A.M. WEDNESDAY, MAY 24.

3. IN MEETING WITH SHAIKH SULTAN, AMBASSADOR WILL:

--A) URGE THAT SHARJAH NOT TAKE ANY PRECIPITATE ACTIONS IN RESPONSE TO CRESCENT'S INSISTENCE UPON PROCEEDING WITH ARBITRATION IN ABSENCE OF A NEGOTIATED SETTLEMENT;

--B) POINT OUT THAT COMPANY IS SERIOUS ABOUT ARBITRATION AND THIS IS NOT A TACTICAL MANEUVER SINCE COMPANY WOULD LOSE A GREAT DEAL IF ARBITRATION WENT AGAINST IT.

--C) STATE BASED ON OUR UNDERSTANDING OF INTERNATIONAL LAW, SHARJAH EFFECTIVELY WAIVED ITS SOVEREIGN IMMUNITY BY ACCEPTANCE OF THE ARBITRATION CLAUSE IN THE 1969 CONCESSION AGREEMENT.

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--D) SHOULD SHARJAH REJECT THE PRINCIPLE OF ARBITRATION, THE USG WOULD BE COMPELLED TO TAKE WHAT ACTION IT COULD TO SUPPORT THE INTEREST OF AMERICAN COMPANIES AS WELL AS THE PRINCIPLE OF INTERNATIONAL ARBITRATION NOTING THAT USG HAS TAKEN THIS POSITION BEFORE WITH RESPECT TO U.S. COMPANIES' INTERESTS IN LIBYA AND IN KUWAIT, AND

--E) FINALLY, THAT USG IS NOT TAKING POSITION ON MERITS OF CRESCENT'S CASE THAT IMPOSITION OF OIL TAX AND ROYALTY RETROACTIVE TO JULY 1, 1976 WOULD MAKE CONCESSION UNECONOMICAL OR OF SHARJAH'S RIGHT TO SEEK A REVISION OF CONCESSION AGREEMENT HOWEVER, USG MUST SUPPORT PRINCIPLE OF ADHERENCE BY BOTH PARTIES TO TERMS OF CONTRACT THEY FREELY ENTERED INTO INCLUDING THOSE CLAUSES SETTING FORTH ARRANGEMENTS TO RESOLVE DISPUTES THROUGH ARBITRATION SHOULD BILATERAL NEGOTIATIONS PROVE UNSUCCESSFUL.

4. ONLY IN UNLIKELY EVENT THAT SHAIKH SULTAN SHOULD INFORM AMBASSADOR THAT HE INTENDED TO NATIONALIZE CRESCENT WILL AMBASSADOR SET FORTH STANDARD USG POSITION THAT USG WOULD SEEK PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION ON BEHALF OF CRESCENT.

5. REGARDING DEPARTMENT'S REQUEST (REF B) FOR OUR COMMENTS ON TEHRAN'S DESIRE TO BE MORE CERTAIN OF OUR FACTS (REF C), ALL WE CAN SAY IS THAT WE HAVE TRIED REPORT ALL INFORMATION GIVEN TO US. NOT CLEAR TO US WHAT MORE IS REQUIRED WITHOUT GETTING INTO TECHNICALITIES OF DISPUTE. MOREOVER, AS WE HAVE ACCESS ONLY TO ONE SIDE OF DISPUTE, WE MUST RELY ON EMBASSY TEHRAN TO PROBE THINKING AND VIEWS OF GOI AND NIOC. IT IS OUR UNDERSTANDING THAT LAST TIME CRESCENT DISCUSSED ITS CASE DIRECTLY WITH NIOC WAS IN AUGUST 1977 WHEN HIGHER TAX AND ROYALTY ISSUE AROSE AGAIN. DISCUSSIONS APPARENTLY HAD SHARJAH'S APPROVAL. OUR IMPRESSION NOW IS THAT NEITHER SHARJAH NOR CRESCENT SEE ANY USE IN FURTHER DISCUSSIONS SINCE ISSUES HAVE BEEN VERY CLEARLY SET FORTH AND CRESCENT APPARENTLY IS NOT CONFIDENTIAL

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WILLING TO CONSIDER NEGOTIATIONS ON STRETCHING OUR PERIOD FOR RETROACTIVE PAYMENTS. COMPANY POSITION SEEMS CLEARLY TO BE THAT ANY RETROACTIVE PAYMENT WILL MAKE ITS ENTIRE OPERATION UNECONOMIC. CONSEQUENTLY, IF EMBASSY TEHRAN DOES NOT WISH AT ACT, SEE NO RECOURSE BUT TO TAKE LINE SET FORTH IN PARA 4 UNLESS OTHERWISE INSTRUCTED BY DEPARTMENT.

6. IF DEPARTMENT HAS ANY FURTHER THOUGHTS, SHOULD BE SENT NIACT IMMEDIATE. AMBASSADOR ETD ABU DHABI FOR SHARJHA IS MIDNIGHT EDST.

DICKMAN

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